



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Precision Echo, Inc.
File: B-232532
Date: January 10, 1989

DIGEST

1. Protest issues are considered abandoned where agency's report specifically addresses arguments raised in initial protest, and protester fails to rebut the agency position in its comments on the agency report.
2. Contention that amendment of solicitation after submission of best and final offers (BAFO) which led to the reopening of competition for a second round of BAFOs was improper, is untimely when asserted after the closing date for receipt of the second round of BAFOs.
3. Contentions of improper disclosure of offerors' pricing and standings are dismissed where the protester does not produce any evidence to support its general allegations aside from the observation that the awardee's price dropped between successive rounds of best and final offers.

DECISION

Precision Echo, Inc., protests the Department of the Navy's award of a contract to Fairchild Weston Systems, Inc., under request for proposals (RFP) No. N00019-87-R-0113 for recorder/reproducer systems.

Initially, Precision Echo challenged the award on the ground that the awardee's base price exceeded its base price and may have been materially unbalanced. Later, following receipt of the agency report, Precision Echo abandoned the original grounds of protest and for the first time (1) objected to the agency's call for a second round of best and final offers (BAFO), and (2) alleged improper disclosure of procurement information to the awardee.

We dismiss the protest.

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The RFP initially sought a total requirement of 257 systems (base quantity of 20, and option quantities of 237) and provided for the evaluation of option prices. Award was to be made to the lowest priced, technically acceptable offeror. Three proposals were received and included in the competitive range. Following discussions and a call for BAFOs, the following prices were received in response to the 257 system requirement:

1. Fairchild	\$21,545,364
2. Precision Echo	\$21,721,538
3. Honeywell	\$24,182,800

However, the evaluators, aware that the agency was not likely to order more than 114 systems, were concerned that a procurement based on 257 systems might not result in an award in the government's best interests. Since the solicitation required stepladder pricing^{1/} of option quantities, the evaluators were able to recalculate the offerors' standings on the basis of a lesser and more realistic requirement of 114 systems. The recalculation showed that for the lesser quantity Precision Echo's price (\$11,340,148) was lower than Fairchild's (\$11,428,029) and Honeywell's (\$13,470,800).

The agency then amended the RFP to reflect its actual requirement for 114 systems and 1 training system, and issued a call for a second BAFO. Fairchild retained its position as the lowest priced technically acceptable offer by reducing its prices as follows^{2/}:

	Fairchild	Precision Echo
Basic	\$4,020,130	\$ 3,925,708
Option I	1,622,255	2,162,110
Option II	796,466	1,219,702
Option III	847,320	1,276,210
Option IV	1,198,829	1,887,696
Total	\$8,485,000	\$10,471,426

1/ Offerors could tender alternative prices for individual line items depending upon the quantity ordered by the government; for example, an offeror could charge \$10 for a quantity of 1 to 5, and \$5 for a quantity of 5 to 10.

2/ Honeywell will not be considered further since it remained in third place with a total evaluated offer of \$11,460,500.

On August 31, 1988, the agency awarded Fairchild the base quantity contract for \$4,001,830 (one line item was not awarded). The award exceeded Precision Echo's price for the same base quantity line items by \$117,499.

The agency's notice to Precision Echo that award had been made to Fairchild showed only Fairchild's base quantity pricing. Unaware of the awardee's option quantity pricing, Precision Echo was concerned that Fairchild improperly received the award. The protester reasoned that if it was low on the base quantity by \$117,499, it might also be lower than the awardee on the option quantities. The protester conceded that its protest lacked merit if the awardee had submitted lower option prices offsetting the awardee's higher base price, and the awardee's pricing was not materially unbalanced. The agency report showed that Fairchild's second BAFO offered low option prices which more than offset Fairchild's higher base price, and that its pricing was not materially unbalanced. Precision Echo has not disputed or refuted the substance of the agency response. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issues to have been abandoned by the protester. Front Desk Enterprises, Inc., B-230732, June 23, 1988, 88-1 CPD ¶ 603.

Following receipt of the agency report, Precision Echo raised a new argument challenging the agency's decision to reopen the competition by amending the solicitation to reflect its revised requirements and calling for a second round of BAFOs. Precision Echo contends that the agency should have awarded it the contract on the basis of its first BAFO because the solicitation's stepladder pricing allowed the agency to evaluate the quantities actually required without a second round of BAFOs. In other words, Precision Echo urges that the initial competition permitted all offerors to assess the risks and costs involved in furnishing different quantities of systems, and to submit pricing which encompassed the modified requirement. We find this issue to be untimely.

Our Bid Protest Regulations provide that protests based on alleged improprieties incorporated into a solicitation by amendment must be filed not later than the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Here, it was clear from amendment 0006 that the basic and option quantities called for under the RFP had changed and that offers were to be revised to reflect the change. To the extent that Precision Echo argues that the change in quantity did not justify a second round of BAFOs, it was

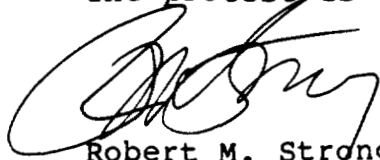
required to raise this issue before second BAFOs were due on August 5. Instead, the protester first raised its concerns about the propriety of the amendment and call for a second round of BAFOs at an October 25 bid protest conference about 11 weeks after the closing date. This issue therefore is untimely raised. R. T. Nelson Painting Services, Inc., B-227953, Oct. 16, 1987, 87-2 CPD ¶ 368, aff'd on reconsideration, R. T. Nelson Painting Services, Inc.--Request for Reconsideration, B-227953.2, Feb. 26, 1988, 88-1 CPD ¶ 198.

In any event, the agency acted properly in amending the solicitation to advise offerors of the substantial increase in its base quantity requirements, and requesting a second round of BAFOs. See Federal Acquisition Regulation § 15.606(a). The protester's argument that the solicitation's stepladder pricing had already given the offerors an opportunity to assess and price the risks and costs associated with the production of various quantities lacks merit because the stepladder pricing applies only to the option quantities. In contrast, the base quantity was a fixed number of systems, and was increased from 20 systems to 56 systems. Thus, under the changed requirement the government was definitely committed to purchase more than twice the number of systems originally called for, and the agency wanted all offerors proposing against "the most accurate profile of the Government's anticipated requirements over the term of the contract." In our view, this concern was reasonable since a substantial change in the base quantity requirement can be expected to have a more certain effect on offerors' pricing than similar changes in option quantities where the government is committed to purchasing the base quantity, and may or may not order the option quantities. See Kisco Company, Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334.

Finally, Precision Echo alleges in broad, general terms that Fairchild was improperly aware of the prices or the order of standing after the first round of BAFOs. Since Precision Echo has not furnished any evidence in support of its general allegations, aside from its observation that Fairchild's price dropped 23 percent between the first and second BAFOs, itself a common occurrence, we view this

aspect of the protest as mere speculation which provides no basis for questioning the award to Fairchild. See Kisco Co., Inc., B-216646, Jan. 18, 1985, 85-1 CPD ¶ 56.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written over the printed name.

Robert M. Strong
Associate General Counsel